

Federal Communications Commission

DA 01-1152

Before the
Federal Communications Commission
Washington, D.C. 20554

MAY -9 P 2:44

In the Matter of

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Mount Pleasant and Hemlock,
Michigan)

MM Docket No. 01-107
RM-10057

FILED

NOTICE OF PROPOSED RULE MAKING

Adopted: April 25, 2001

Released: May 4, 2001

Comment Date: June 25, 2001

Reply Date: July 10, 2001

By the Chief, Allocations Branch

1. Before the Commission for consideration is a Petition for Rule Making filed on behalf of Wilks Broadcasting LLC ("Wilks"), proposing the reallocation of Channel 233C1 from Mount Pleasant, Michigan, to Hemlock, Michigan. Wilks also requests modification of its license for Station WCEN-FM, Mount Pleasant, to be modified to specify operation at Hemlock. Wilks stated its intention to apply for Channel 233C1 if it is reallocated to Hemlock.

2. Wilks filed its request pursuant to Section 1.420(i) of the Commission's Rules which permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. See Modification of FM and TV Authorizations to Specify a New Community of License ("Change of Community R&O") 4 FCC Rcd 4870 (1989), recon. granted in part ("Change of Community MO&O"), 5 FCC Rcd 7094 (1990). In support of its proposal, Wilks states that the requested reallocation of Channel 233C1 to Hemlock is mutually exclusive with the current allotment of Channel 233C1 at Mount Pleasant and that the channel should be reallocated without the acceptance of competing expressions of interest in the Hemlock allotment. Wilks contends that its proposal is in the public interest as Hemlock will be provided with its first local service and that there is no issue of service loss or gain created by this proposal as relocation is not a factor. According to Wilks, Hemlock is listed in the 1990 U.S. Census as a Census Designated Place with a population of 1,601 people with its own post office and zip code. Further, the community has its own schools, library, several churches, including Hemlock United Methodist Church, and numerous businesses that serve its residents, including Hemlock Semiconductor Corporation, Hemlock Cleaners, Hemlock Family Hair Care, Hemlock Body Shop and the Hemlock Veterinary Clinic. Wilks states that Hemlock also has several banks, a daycare center, restaurants, grocery stores and the Maple Hill Golf Club.

3. In a supplement to its petition filed January 18, 2001, Wilks states that Station WCEN-FM is a pre-1964-grandfathered short-spaced station and this grandfathered short-spacing should survive the requested change of community. Station WCEN-FM is short-spaced to Stations WCSX-FM, Birmingham, Michigan, WKLQ-FM, Holland, Michigan, and WBYB(FM), Leland, Michigan. The short-spacings between Station WCEN-FM and WCSX(FM), Birmingham and Station WKLQ(FM), Holland, are grandfathered as the stations were authorized prior to 1964. With respect to Station WBYB(FM), Leland, Wilks states that the Commission authorized Station WBYB(FM) to operate at a site short-spaced to Station WCEN-FM pursuant to Section 73.215 of its Rules. Wilks contends that since its proposed reallocation does not involve the relocation of Station WCEN-FM's transmitter, no new short-spacings will be created or existing short-spacings increased. Wilks believes that its proposal is acceptable for reallocation under the Commission's policy where no transmitter site or other technical change is being proposed and the stations involved are pre-1964 short-spaced stations or the petitioning station has been restricted by another station pursuant to Section 73.215 of the Commission's Rules. To further support its proposal, Wilks cites Killeen and Cedar Park, Texas, 15 FCC Rcd 1945 (2000), Oceanside and Encinitas, California, 14 FCC Rcd 15302 (1999) and Newnan and Peachtree City, Georgia, 7 FCC Rcd 6307 (1992).¹

4. Channel 233C1 can be allotted to Hemlock, Michigan, at Station WCEN-FM's licensed site 46.1 kilometers (28.7 miles) northwest of the community.² At this site, Station WCEN-FM will remain short-spaced to Stations WCSX(FM), Birmingham, Michigan, WKLQ(FM), Holland, Michigan, and WBYB, Leland, Michigan. Station WCEN-FM is fully spaced to the allotment site for Station WBYB, Leland, Michigan. If the request filed by Wilks for a change of community and protection as a grandfathered short spaced station is granted, Wilks will be required to specify its current licensed site for Station WCEN-FM, Mount Pleasant, for the applications for a construction permit and a license for Station WCEN-FM, Channel 233C1, Hemlock, Michigan. In accordance with Section 1.420(i) of the Commission's Rules, we shall not accept competing expressions of interest in the use of Channel 233C1 at Hemlock, Michigan. Since Hemlock, Michigan, is located within 320 kilometers of the U.S-Canadian border, the Canadian Government will be notified of the change of community if Channel 233C1 is reallocated to Hemlock.

¹ In Newnan and Peachtree City, Georgia, the Commission reallocated Channel 244A from Newnan to Peachtree City and modified the license of Station WJKJ to specify Peachtree City as the new Community of license. Station WJKJ was a grandfathered pre-1964 station that did not meet the current spacing requirements set forth in Section 73.207 of the rules. The proposal did not involve any change in technical facilities. In Killeen and Cedar Park, Texas, the Commission reallocated pre-1964 Station KLNC from Killeen, Texas, to Cedar Park, Texas, with no site or facility change. Station KLNC remained short-spaced to pre-1964 grandfathered Station KLBj with short-spacings to stations at Dublin, Port Lavaca and Haltom City, which operate under Section 73.215 of the Rules with respect to Station KLNC. In Oceanside and Encinitas, California, the Commission granted a change of community of license to a short-spaced pre-1964 grandfathered station at its existing site.

² The coordinates for Channel 233C1 at Hemlock are 43-43-36 and 84-36-16. At this site, Station WCEN-FM is fully spaced to the licensed site for Station WLJZ, Channel 233C3, Mackinaw City, Michigan. However, Station WLJZ filed a one-step application for Channel 233C2 under Section 73.215 of the Rules which conflicts with Channel 233C1 at Hemlock (BPH-20000310ACJ). The construction permit for Channel 233C2, Mackinaw City, expires February 22, 2004. We will serve Station WLJZ with a copy of this Notice.

5. In view of the fact that the proposed allotment could provide a first local service to Hemlock without depriving Mount Pleasant of its sole local service, the Commission believes it would serve the public interest to solicit comments on the proposal to allot Channel 233C1 to Hemlock, Michigan. Therefore, we will seek comments on the proposed amendment to the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to Hemlock and Mount Pleasant, Michigan, as follows:

Channel No.		
Community	Present	Proposed
Hemlock, Michigan	-----	233C1
Mount Pleasant, Michigan	233C1, 282A	282A

6. IT IS FURTHER ORDERED, That the Secretary of the Commission shall send by Certified Mail, Return Receipt requested, a copy of this Notice of Proposed Rule Making to the following:

Northern Star Broadcasting, LLC
Station WLJZ
213 S. Airport Road West
Traverse City, Michigan 49686

7. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

8. Interested parties may file comments on or before June 25, 2001, and reply comments on or before July 10, 2001, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, 445 Twelfth Street, S.W., Washington, D. C. 20554. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

Richard R. Zaragoza
Veronica D. McLaughlin
Shaw Pittman
2300 N Street, N.W.
Washington, D. C. 20037-1128

9. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

10. For further information concerning this proceeding contact Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204.(b) and 0.283 of the Commission's Rules, **IT IS PROPOSED TO AMEND** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties, must be made in written comments reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.)

Comments should be filed with the Secretary, Federal Communications Commission, 445 Twelfth Street, S.W., TW-A325, Washington, D. C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 445 Twelfth Street, S.W., Washington, D. C.